IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.
No. 10-COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.
[Chapter VIII, Rule 32(2) (b)]

Criminal Appeal No. 2042/2001
(old No.2629 of 1988)

Ram Chandra & others — Appellants.

Vs.

State — Respondent.

Decided on 17-04-2006

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(P.C. Verma, J.)

(B.C. Kandpal, J.)

Dated: 17-04-2006

In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 2042/2001
(old No.2629 of 1988)

1- Ram Chandra S/o Shanker
2- Anand S/o Ram Chandra,
3- Kailash S/o Ram Chandra
4- Raju @ Raj Kumar S/o Ram Chandra,
All residents of Village Sultanpur, P.S. Bazpur
District Nainital …Appellants.

Versus

State …Respondent.

Sri B.S. Adhikari, learned counsel for the appellant.
Sri D.K. Sharma, learned G.A. assisted by Sri H.C. Pandey. learned A.G.A. for the State.

Coram:Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 17-4-2006

The appellants Ram Chandra, Anand, Kailash and Raju alias Raj Kumar have preferred this criminal appeal against the judgment and order dated 4-11-1988/15-11-1988, passed by I Additional Sessions Judge, Nainital, in Sessions Trial No. 116 of 1987 State Versus Ram Chandra and others, convincing the accused/appellants U/S 302/34 I.P.C. and sentencing each of them to undergo life imprionment.

2- Brief facts of the case are that the accused/appellants Anand, Kailash and Raju @ Raj Kumar are the sons of accused/appellant Ram Chandra. One Om Prakash owned four acres of land in the Khadar of Kosi river in the revenue estate of village Ramjiwanpur. Kaluwa, (deceased) was cultivating this land on the consideration of division of yield with Om Prakash. The accused/appellants took illegal possession over the said land Kaluwa protested and the possession of the land was taken back from the accused/appellants. The accused/appellants were inimical towards the deceased Kaluwa for the above reason. As per the prosecution case on 13-10-1986 at about 9 P.M. Kaluwa

was present near the railway crossing Chauraha within the revenue estate of Sultanpur, P.S. Bazpur. All the accused/appellants went there and in furtherance of their common intention they started beating Kaluwa with legs and fists. The blows were given on his chest, ribs and abdomen. Kaluwa raised alarm and the witnesses Chhida (P.W.2), Badalu (P.W.3) and Abdul Rashid intervened. Thereafter the accused/appellants ran away from the spot. Kaluwa fell down and became unconscious. Hearing the cries of Kaluwa, complainant Chhote (P.W.1) also reached there. He made arrangement of a cot to take Kaluwa to hospital, but in the meantime Kaluwa died. Chhote got the written report (Ext. Ka.1) scribed by one Mohd. Jan and lodged it at P.S. Bazpur at 10.35 P.M. the same day, i.e., 13-10-1986. Constable Clerk Balwant Singh of P.S. Bazpur on the basis of the written report, recorded the chick F.I.R. (Ext. Ka.2) and registered a case against the accused/appellants U/S 304 I.P.C. in the General Diary at Report No. 46, carbon copy of which is Ext. Ka.3.

3- The investigation of the case was taken up by S.I. Dinesh Chandra Singh Bhandari. He recorded the statements of witnesses. On 14-10-1986 he inspected the spot and prepared site plan, Ext. Ka.4. On his instructions S.I. Om Prakash prepared inquest report, Ext. Ka.5, challan of dead body, Ext. Ka. 7, Sketch map of dead body, Ext. Ka.8, wrote letters, ext. Ka.6 and Ka.10 to the Medical Officer requesting him to take the clothes of deceased in custody and to conduct the post-mortem on the dead body of deceased Kaluwa. On 16-10-1986 the Investigating Officer arrested the accused/appellants Anand, Ram Chandra and Kailash and made entry of this fact in the General Diary at report No. 27, carbon copy of the G.D. is Ext. Ka. 11. On 21-10-1986 the I.O. arrested accused/appellant Raju @ Raj Kumar and entry to that effect was made in the G.D. at report No. 43, carbon copy of the G.D. is Ext. Ka. 12. On completion of investigation, the I.O. submitted charge sheet, Ext. Ka. 13 against the accused/appellants.

4- On committal of the accused persons to the court of Sessions, the Sessions Judge framed charge U/S 302/34 I.P.C.

against the accused persons. They pleaded not guilty to the charged and claimed their trial.

5- In support of the case, the prosecution examined in all six witnesses. Out of those, P.W.1 Chhote is the stepbrother of deceased Kaluwa. He is also complainant of the case, This witness has deposed that the deceased Kaluwa had taken 4 acres land from Ram Prakash for cultivation near the bank of river Kosi and the accused/appellants were inimical to the deceased with regard to the possession of this land. On the day of the occurrence the deceased had gone to railway crossing, for a walk. When this witness heard noise at railway crossing, he reached there. He saw that electric bulb was burning at the place of the occurrence and the accused/appellants were beating Kaluwa with kicks and fists. he also deposed that witnesses Chida and Badalu were already present at the spot and they were intervening and on his reaching there, the accused persons ran away from there. According to this witness Kaluwa had fallen on the ground in an unconscious state. He went to make arrangement for a cot and sheen returned with cot at the sopt, till that time kaluwa had died. This witness also deposed that he left the dead body at the spot and got scribed the written report by one Mohd. Jan and handed over it at P.S. Bazpur. This witness has proved the written report, Ext. Ka.1.

6- P.W.23, Chida is the eyewitness of the occurrence. He has deposed that on the day of occurrence in the night at about 9 P.M. he was sitting at his shop near railway crossing. There was light of electric bulb. As and when Kaluwa reached at the Chauraha, in front of his shop, the accused Ram Chandra and his three sons also reached there and all of them started beating Kaluwa with kicks and fists. Kaluwa raised alarm and on hearing his alram a number of people assembled there. Witness Badalu was already present there. According to him Chhote had also reached at the spot and on the challenge of Chhote, the accused persons ran away from the place of the occurrence. This witness also stated that Kaluwa after the assault by the accused persons had fallen on the

ground and became unconscious. Chhote had gone to arrange for a cot and when he returned with the cot, till then Kaluwa had died.

7- P.W.3, Badalu is also an eyewitness of the occurrence. He has supported the version of P.W.2, Chida and P.W.1 Chhote. He has narrated that at the spot electric bulb was burning. He was standing at the Chauraha and saw that Kaluwa had reached at the Chauraha from northern side whereas the accused Raju, Kailash, Anand and their father Ram Chandra reached there from western side and all of them started beating Kaluwa with kicks and fists and carried him upto electric pole, where kaluwa fell down and became unconscious. According to this witness Chhote, had also reached there and thereafter the accused persons fled away from the spot. This witness also deposed that Chhote went to arrange a cot for carrying Kaluwa to hospital and when he returned till then Kaluwa had died.

8- P.W.4 Constable Izharul Hassan had given statement on oath in the form of affidavit. He has deposed that on 13/14-10-1986 he was posted at Sultanpur patti Police Chauki, P.S. Bazpur. On 14-10-1986 he, along with constable Mahipal Singh carried the dead body of deceased in sealed condition to kashipur hospital. He also deposed that the dead body remained intact with them and they handed over it to Kashipur hospital along with the relevant papers.

9- P.W.5, S.I. dinesh Chandra Singh Bhandari is the Investigating Officer of the case. This witness has narrated the steps taken by him during investigation and also proved the prosecution papers.

10- P.W.6, Dr. A.K. Lumba, has performed autopsy on the dead body of deceased Kaluwa. He has deposed that on 14-10-1986 at about 4.15 P.M. he had performed autopsy on the dead body of Kaluwa L.D. Bhatt Hospital kashipur. According to this witness the deceased had average built body. Rigor mortis was present all over body and there was no sign of decomposition. He did no observe any external injury over the body. In internal examination the witness found that the abdomen cavity was full of blood in which about 3 liters blood was present. The stomach

contained semi-digested food about 100 grams. In small and large intestines gases and faecal matter was present. The spleen was ruptured. This witness took the shirt, Paijama and Baniyan of the deceased in custody and sealed in a separate bundle.

In the opinion of the Doctor the cause of deact was shock and haemorrhage caused due to ruptured spleen. This witness has proved the post mortem examination report, Ext. Ka.14.

11- The accused/appellants in their statements U/S 313 Cr.P.C. have denied the prosecution allegations and stated that they have been falsely implicated in the case. They also stated that the witnesses are related to the deceased and they have falsely deposed against them.

12- The Additional Sessions Judge on his assessment of the evidence on record held the accused/appellants guilty of the offence U/S 302/34 I.P.C. and sentenced each of them to undergo imprisonment for life.

13- Feeling aggrieved, the accused/appellants have filed this criminal appeal before the Allahabad High Court, which after creation of new State has come up before this Court for hearing.

14- We have heard the learned counsel for the accused/appellants, learned G.A. and perused and record.

15- In the instant case the evidence reveals that the occurrence took place on 13-10-1986 at 9 P.M. in Village Sultanpur, within the jurisdiction of Sultanpur Patti. The First Information report has been lodged by Chhote, P.W.1 at the Police Station on 13.10.1986 at 10-35 P.M. The distance of the Police Station from the place of the occurrence is 10 kilometers. The First Information Report reveals that the informant immediately rushed towards the Police Station for lodging the Fist Information Report, leaving the dead body of kaluwa at the sopt. P.W.1, Chhote in his deposition has stated that when he reached at the spot, he saw that Kaluwa was lying unconscious, then he arranged for a cot and when he reached at the place of the occurrence with the cot, he saw that Kaluwa had already succumbed to injuries, therefore he rushed to Police Station, leaving the dead body at the spot. This witness has also deposed that he got the report scribed at

Sultanpur Patti Chauraha from one Mohmmad Jan and thereafter he lodged the same at Police Station, Bazpur. Therefore, the above mentioned sequence, clearly indicate that the informant without wasting even a singly moment of time, rushed to the Police Station, got the First Information Report scribed and lodged the same at the Police Station Keeping in view the distance of the Police Station from the place of the occurrence, as well as the manner in which the informant had lodged the First Information Report at Police Station without wasting even a singly moment of time, indicate that the informant did not have any time for deliberation and false implication of the appellants in this crime. We are of the view that the First Information Report is quite prompt and there are no chances for any concoction in the same.

16- The another important aspect in this matter is the motive available with the appellants for commission of the crime. In this regard the statement of P.W.1, Chhote shows that deceased Kaluwa had taken the land from one Om Prakash on “Batai” but the accused/appellants forcibly took the possession of the said land and on account of this there was a litigation between was with Om Prakash, therefore, the accused/appellants were in inimical terms with the deceased Kaluwa. The suggestion has been put by the defence to P.W.1 that he is implicating the accused/appellants in this crime on account of enmity. Therefore, it is quite clear that there was an enmity between the accused/appellants and the deceased prior to this incident and on account of the enmity the accused/appellants had committed this offence. Hence it is quite clear that the accused/appellants had a motive to assault the deceased and causing injuries on his person.

17- The learned counsel for the appellants has argued that in this case the incident is alleged to have taken place in the night at 9 P.M. and there was no source of light available at the place of the occurrence, therefore, it was not possible for the eye witnesses to identify the assailants.

18- We fail to appreciate this argument. The Investigating Officer in the site-plan has shown electric pole over which there

was a mercury light. P.W.2, Chhidda is an eye witness of the occurrence and he has stated in his cross-examination that he had shown the electric pole to the Investigating Office. P.W.3, Badalu has also deposed about the electric pole with the mercury light at the spot. Therefore, it is quite clear that the source of light was available at the spot and the appellants were identified by the witnesses in that light. Moreover in this case the appellants are known to the witnesses prior to the occurrence, therefore, the source of light makes hardly and difference. Any how the source of light is mentioned in the site-plan as well as the same has been disclosed in the deposition of the eye witnesses.

19- Leaned counsel for the appellants has further argued that in this case the ocular version does not inspire confidence in view of the material contradictions in the depositions of the witnesses. It has further been submitted that the ocular version does not find any support by the medical evidence.

20- The record reveals that the Medical Officer Dr. Lumba, P.W.6 did not find any visible injury over the body of deceased Kaluwa. The prosecution case is that the appellants had beaten the deceased Kaluwa by fists and kick. P.W.1, Chhote is not an eye witness of the occurrence, but P.W.23, Chhidda and P.W.3 Badalu have been produced by the prosecution as eyte witnesses. Both the witnesses have deposed in their depositions that the appellants were beating the deceased Kaluwa with kicks and fists and on account of the beating by the appellants, Kaluwa fell on the earth unconscious. P.W.2, Chhidda was present in his shop at the time of the occurrence and he has stated that during those days there was a Dushehra Fair. This witness has also stated that the place where the incident has taken place is at a distance of 8 to 10 paces from his shop, therefore, the presence of this witness at the scene of the occurrence, appears to be quite natural and probable. There is nothing in the cross-examination of this witness which may suggest that this witness is either telling lie or was not present at the time when the incident took place. Moreover, the defence could not point out anything in the cross-examination of this

witness that he is deposing against the appellants on account of enmity.

21- Further, P.W.3 Badalu is also an eye witness. This witness has his house at a distance of about half furlong from the place of the occurrence and he was present at the Chauraha when the occurrence took place. This witness has also stated that mercury light was present at the place of the occurrence. This witness also deposed that Chhidda was also present in his shop at that time. He has further deposed that the appellants assaulted Kaluwa with kicks and fists due to which he fell down on the earth and became unconscious. This witness has also stated that when Kaluwa was taken to hospital, then he succumbed to injuries. Again the defence could not point out any material contradiction in the statement of this witness also, which may suggest that this witness is either telling lie or was not present at the place of the occurrence. This witness is also not in inimical terms with the appellants in any manner therefore there I s no reason as to why this witness will tell a lie or will implicate the appellants in a false case.

22- As far as the medical evidence is concerned, we have already stated above that the doctor in fact did not find any visible injury on the person of the deceased. Further in the internal examination of the deceased Kaluwa, the doctor found that the spleen of Kaluwa was ruptured and his death was caused on account of the same.

23- It is, therefore, quite clear that the appellants assaulted Kaluwa at the place of the occurrence. Hence it is established that the appellants had assaulted Kaluwa with kicks and fists and on account of the same he fell on the earth and became unconscious and on account of spleen rupture he succumbed to injuries when he was taken to hospital.

24- It is now to be seen whether the appellants in fact are guilty for having committed the offence under Section 302/34 I.P.C. or not.

25- The evidence on record clearly show that the accused/appellants did not have any weapon in their hands. They

caused marpit with deceased Kaluwa by kicks and fists and it is the reason that the doctor did not find any visible injury on the body of the deceased. The death of the deceased was caused on account of spleen rupture.

26- Rupture of a normal spleen is very rare, unless caused by considerable crushing and grinding force such as the passing of a carriage or motor car over the body, or by a crush in a railway accident, or by a fall from a very high place and in such cases it is usually associated with the injuries to other solid organs and to the ribs overlying the spleen. A normal spleen may some times got ruptured by the broken ends of ribs which may be fractured by a severe kick or by a blow from a blunt weapon. The situation of a normal spleen in the body is so secure that normally it is not ruptured unless there crushing of the body or there is a fall from a very high place. The Investigaing Officer at the time of preparing "photo lash" as well as the doctor also at the time of conducting the autopsy on the body of the deceased, did not find any visible injury on the body. Therefore, it can be safely held that had the deceased been given a severe beating either by kicks or fists, he must have in normal course, sustained some visible injuries like contusion. The fact that the deceased had no visible injuries on his body, shows that he was not subjected to any severe beating and under these circumstances had the spleen of the deceased being normal and not enlarged, would have not been ruptured.

27- Therefore, taking the facts and circumstances of the case into consideration, we are of the opinion that the fist blow in this case, no doubt, resulted in subdural haematoma which led to the death of the victim, but it could not be said that the appellants could be attributed with the knowledge that by such act they were likely to cause death of the deceased. Nor could it be said that the appellants intended to cause that particular injury which they caused. Hence under these circumstances the offence could fall U/S 323/34 Penal Code and not U/S 302/34 I.P.C.

28- Accordingly, we are of the opinion that this appeal is liable to be partly allowed and the judgment and order under appeal is to be set aside.

29- We, therefore, allow the appeal in part and set aside the conviction and sentence of the appellants U/S 302/34 I.P.C. and instead convict them for an offence punishable U/S 323/34 I.P.C. We also direct that each of the appellants will have to undergo maximum sentence provided for the offence, namely, rigorous imprisonment for one year.

30- The appellants are on bail. They shall be taken into custody forthwith, so as to serve out the sentence awarded against them.

31- Let the record be sent back to court concerned for compliance.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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